UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**SA CV 12-1442 FMO (PLAx)**	Date	**August 1, 2016**
Title	**RBC Bearings Incorporated v. Caliber Aero, LLC, et al.**		

Present: The Honorable	Fernando M. Olguin, United States District Judge

Vanessa Figueroa	None	None
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorney Present for Plaintiff(s):	Attorney Present for Defendant(s):
None Present	None Present

Proceedings: **(In Chambers) Order Re: Motion for Attorney's Fees and Costs**

Having reviewed and considered all the briefing filed with respect to defendants' Motion for Attorneys' Fees and Non-Taxable Costs (Dkt. 182, "Motion"), the court concludes that oral argument is not necessary to resolve the Motion, see Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND

On August 31, 2012, plaintiff RBC Bearings Incorporated ("plaintiff" or "RBC") filed its initial complaint against defendants Caliber Aero, LLC ("Caliber") and individual defendants Mary Alvarado ("Alvarado"), David McCullouch ("McCullouch"), David Rankine ("Rankine"), Jeffrey L. Rindskopf ("Rindskopf"), and Charles Sharp ("Sharp") (collectively, "individual defendants"). (See Dkt. 1, Complaint). On December 11, 2012, plaintiff filed the operative Second Amended Complaint against the same defendants alleging the following causes of action: (1) violation of California's Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426, et seq.; (2) breach of confidence; (3) breach of written contract; (4) fraud; (5) negligent misrepresentation; (6) conversion; (7) intentional interference with contractual relations; (8) intentional interference with prospective economic advantage; and (9) unfair business practices, Cal. Bus. & Prof. Code §§ 17200, et seq.[1] (See Dkt. 29, Second Amended Complaint ("SAC") at ¶¶ 33-169). Plaintiff alleged that the individual defendants "misappropriated and used Plaintiff's trade secret information to wrongfully and unfairly develop, manufacture, market, and sell aerospace equipment to Plaintiff's actual and prospective customers that Defendant Caliber did not manufacture, market, or sell prior to the individual Defendants' employment at Defendant Caliber." (Id. at ¶ 40).

On September 11, 2006, plaintiff acquired All Power Manufacturing Co. ("All Power"). (See Dkt. 29, SAC at ¶ 14). The individual defendants, all former employees of All Power who

[1] On April 3, 2013, the court granted defendants' motion to dismiss the fraud and negligent misrepresentation causes of action with prejudice. (See Dkt. 45, Court's Order of April 3, 2013, at 12).

eventually ended up working for Caliber, resigned their employment with All Power in 2006 (Rankine), September 2007 (Rindskopf), October 2007 (Sharp), June 2009 (McCullouch), and March 2012 (Alvarado), respectively. (See id. at ¶¶ 104-108).

On July 3, 2012, plaintiff sent a cease-and-desist letter to defendants, contending that Caliber "purposely hired former RBC employee, Mary Alvarado, to use RBC's confidential information to call upon RBC's customers and lure their business to Caliber." (Dkt. 183-14, Appendix of Exhibits ("App'x"), Exh. 24 at 453). Defendants responded on July 16, 2012, and requested that plaintiff provide defendants with any evidence of wrongdoing in plaintiff's possession. (See Dkt. 183-15, App'x at Exh. 25). Plaintiff did not respond. (See, generally, Dkt.). Instead, plaintiff filed the instant action. (See Dkt. 1, Complaint) (filed August 31, 2012).

On August 7, 2013, nearly a year after the instant case was filed, defendants sent a letter to plaintiff's counsel, "urg[ing plaintiff] to dismiss the action now to limit RBC's and [plaintiff's] exposure to further attorneys' fees and other liability." (Dkt. 183-17, App'x, Exh. 27 at 470). Specifically, defendants' letter noted that plaintiff knew, based on the documents defendants had already produced, "that there is no evidence whatsoever that the defendants took or are using any of RBC's alleged trade secrets." (Id. at 469). Again, plaintiff did not respond. (See, generally, Dkt.).

On October 15, 2013, the discovery cut-off in this action, All Power filed two state court actions against defendants and defendant David Rankine's mother, Joyce Rankine, in the Los Angeles County Superior Court. (See Dkt. 183-10, App'x, Exh. 20 (All Power Mfg. Co. v. Caliber Aero, LLC, et al., CV 063543 (Cal. Super Ct.)) ("Caliber Action"); Dkt. 183-11, App'x, Exh. 21 (All Power Mfg. Co., et al. v. [Joyce] Rankine, et al., CV 524432 (Cal. Super Ct.)) ("J. Rankine Action")). In the Caliber Action, All Power filed suit against the same defendants in this case, (compare Dkt. 29, SAC with Dkt. 183-10, App'x at Exh. 20), alleging similar causes of action for: (1) breach of confidence, (2) intentional interference with contractual relations, (3) intentional interference with prospective economic advantage; and (4) negligent interference with prospective economic relations. (See Dkt. 183-10, App'x, Exh. 20 at ¶¶ 38-77). Specifically, All Power alleged that "Defendants engaged in and continue to engage in unlawful conduct to sabotage and interfere with All Power's economic relationships with its customers for Defendants' benefit and All Power's damage." (Id. at ¶ 33).

In the J. Rankine Action, All Power filed suit against defendant Rankine's mother for breach of the stock purchase agreement in which plaintiff acquired All Power. (See Dkt. 183-11, App'x, Exh. 21 at ¶¶ 9-20). Specifically, All Power alleged that Joyce Rankine participated in the formation and operations of Caliber in breach of the stock purchase agreement. (See id.).

Before this action was filed, on July 19, 2012, Joyce Rankine filed a complaint against Roller Bearing Company of America, Inc. ("RBC America") for failure to pay amounts owed under a promissory note in connection with plaintiff's acquisition of All Power. See Joyce Rankine, et al. v. Roller Bearing Co. of Am., Inc. et al., CV 12-2065 (S.D. Cal.) ("Counterclaim Action"). On

January 23, 2013, RBC America filed counterclaims against Joyce Rankine alleging that the individual defendants had "engaged in fraudulent, unlawful, and wrongful conduct by misappropriating, using, disclosing, and obtaining by improper means, [RBC America's] trade secret information[.]" (See Dkt. 183-7, App'x, Exh. 17 at ¶ 38). On November 5, 2013, the court in the Southern District of California granted Joyce Rankine's motion for summary judgment, concluding that "[t]here [wa]s no evidence to support [RBC America's] claim of [the individual defendants'] misconduct. It is pure conjecture that the [individual defendants] utilized All Power's intellectual property assets when forming Caliber Aero, LLC." (Dkt. 183-8, App'x, Exh. 18 at 370). The court in the Counterclaim Action awarded Joyce Rankine attorney's fees and costs amounting to approximately $180,000. (See Dkt. 183-9, App'x, Exh. 19 at 385).

On August 22, 2014, during the meet and confer relating to defendants' motion for summary judgment in this action, plaintiff's counsel admitted that none of the documents produced by defendants contained any of plaintiff's trade secrets. (See Dkt. 183-13, App'x, Exh. 23 at 435 (Defts' counsel: "Would you agree that there were matches as far as anything proprietary?" Plff's counsel: "I[] don't believe they were, there were any."); id. at 436 (Defts' counsel: "there is no match you would agree?" Plff's counsel: "I believe that there wasn't a match.")). Plaintiff's counsel also admitted that the names of its customers are neither trade secrets nor confidential under California law. (See id. at 433-34). Plaintiff nevertheless opposed defendants' motion for summary judgment, which was almost exclusively based on Alvarado's purported misappropriation of the identities of plaintiff's customers in 2012. (See Dkt. 163, Renewed Joint Brief in Support of Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary ("MSJ Jt. Br.")) (filed September 10, 2014).

On January 6, 2015, after the motion for summary judgment was fully briefed and the court had taken the motion under submission, the parties filed a stipulation to dismiss the case with prejudice. (See Dkt. 179, Stipulation to Dismiss Case with Prejudice Pursuant to Federal Rules of Civil Procedure, Rule 41(a)(2) ("Stipulation")). The next day, the court dismissed the case with prejudice but reserved jurisdiction to hear any timely request for fees and costs. (See Dkt. 180, Court's Order of January 7, 2015).

LEGAL STANDARD

The California Uniform Trade Secrets Act ("CUTSA") "authorizes the trial court to award attorney fees as a deterrent to specious trade secret claims." FLIR Sys., Inc. v. Parrish, 174 Cal.App.4th 1270, 1275 (2009); see Gemini Aluminum Corp. v. Cal. Custom Shapes, Inc., 95 Cal.App.4th 1249, 1261 (2002) (similar). CUTSA provides that "[i]f a claim of misappropriation is made in bad faith . . . the court may award reasonable attorney's fees and costs to the prevailing party." Cal. Civ. Code § 3426.4. "Because the award is a sanction, a trial court has broad discretion in awarding fees." FLIR Sys., 174 Cal.App.4th at 1275; see Gemini Aluminum Corp., 95 Cal.App.4th at 1262 (similar).

DISCUSSION

Application of Cal. Civ. Code § 3426.4 "naturally raises three questions: Is the defendant the prevailing party? Was the claim made in bad faith? And what is a reasonable fee?" Cypress Semiconductor Corp. v. Maxim Integrated Prods., Inc., 236 Cal.App.4th 243, 253 (2015).

I. PREVAILING PARTY.

The court is satisfied that the dismissal with prejudice pending a ruling on defendants' motion for summary judgment renders defendants the prevailing parties. See Zenith Ins. Co. v. Breslaw, 108 F.3d 205, 207 (9th Cir. 1997), abrogated on other grounds by Ass'n of Mex.-Am. Educators v. State of Cal., 231 F.3d 572 (9th Cir. 2000) (finding voluntary dismissal with prejudice is sufficient to confer prevailing party status on the defendant because "a dismissal with prejudice is tantamount to a judgment on the merits") (internal quotation marks omitted); Cypress Semiconductor, 236 Cal.App. 4th at 253-58 (holding defendant was prevailing party under Cal. Civ. Code § 3426.4 where plaintiff dismissed the action before the court ruled on defendant's demurrer).

II. BAD FAITH.

"Although the [California] Legislature has not defined 'bad faith,' [California] courts have developed a two-prong standard: (1) objective speciousness of the claim, and (2) subjective bad faith in bringing or maintaining the action, i.e., for an improper purpose." FLIR Sys., 174 Cal.App.4th at 1275.

A. Objective Speciousness.

"Objective speciousness exists where the action superficially appears to have merit but there is a complete lack of evidence to support the claim." FLIR Sys., 174 Cal.App.4th at 1276. "A defendant moving for attorney fees under section 3426.4 is not required to conclusively prove a negative (i.e., that they did not steal [the plaintiff's] trade secrets)." Cypress Semiconductor, 236 Cal.App.4th at 260 (alteration in original; internal quotation marks omitted). "[U]nder the objectively specious standard, it [i]s enough for defendants to point to the absence of evidence of misappropriation in the record." SASCO v. Rosendin Elec., Inc., 207 Cal.App.4th 837, 848 (2012), as modified on denial of reh'g (Aug. 7, 2012) (internal quotation marks omitted); id. at 849 ("It does not matter that the evidence specifically cited by the court did not conclusively prove the absence of misappropriation.").

A plaintiff asserting a claim for misappropriation of trade secrets under CUTSA must prove: "(1) possession by the plaintiff of a trade secret; (2) the defendant's misappropriation of the trade secret, meaning its wrongful acquisition, disclosure, or use; and (3) resulting or threatened injury to the plaintiff." Silvaco Data Sys. v. Intel Corp., 184 Cal.App.4th 210, 220 (2010), disapproved of on other grounds by Kwikset Corp. v. Super. Ct., 51 Cal.4th 310 (2011). "'Trade secret' means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Cal. Civ. Code § 3426.1(d).

Considering whether a claim was made in bad faith typically begins with "an examination of the plaintiff's own pleadings and such proofs as he or she may have introduced into the record." Cypress Semiconductor, 236 Cal.App.4th at 260. Here, RBC designated seven trade secrets at issue in this case. (See Dkt. 163, MSJ Jt. Br. at 5). RBC abandoned its claims of misappropriation of Trade Secrets Nos. 1 and 4-7 by failing to advance any evidence supporting defendants' misappropriation claim in its portion opposing the MSJ Joint Brief. (See, generally, id.; see also Dkt. 164, Corrected Statement of Uncontroverted Facts ("SUF") at D31 & D32 (Trade Secret 1); D36 & D37 (Trade Secrets 4 & 5); D39 & D40 (Trade Secret 6); D41-D43 (Trade Secret 7)); see GN Resound A/S v. Callpod, Inc., 2013 WL 1190651, *5 (N.D. Cal. 2013) (when plaintiff failed to oppose a motion as to a particular issue, "the Court construes as a concession that this claim element [is] not satisfied];" Hall v. Mortg. Investors Grp., 2011 WL 4374995, *5 (E.D. Cal. 2011) ("Plaintiff does not oppose Defendants' arguments regarding the statute of limitations in his Opposition. Plaintiff's failure to oppose . . . on this basis serves as a concession[.]").

The remaining two asserted trade secrets – Trade Secret Nos. 2 and 3 – relate to customer information. (See Dkt. 164, SUF at D33-D34, P129, P141-P143 & P146 (Trade Secret 2); id. at D35, P129, P141 & P144-P146 (Trade Secret 3)). Trade Secret No. 2 concerns RBC's pricing policy and minimum quantity requirements for its customers. (See Dkt. 163, MSJ Jt. Br. at 5 & 6). Trade Secret No. 3 concerns confidential customer profiles and compilations of customer preferences and information. (See id.). In the MSJ Joint Brief, RBC argued that defendant Alvarado improperly acquired, disclosed and used information in RBC's trade secret customer lists.[2] (See, e.g., Dkt. 164, SUF at D23, P62-P64, P95-P115 & P153-P156).

As noted earlier, during the meet and confer relating to defendants' motion for summary judgment, RBC's counsel conceded that the names of its customers were not a trade secret.[3]

[2] Aside from defendant Alvarado, who will be discussed below, plaintiff's summary judgment papers rarely mention, let alone provide any evidence, to support any trade secret violations against defendants McCullouch, Rankine, Rindskopf and Sharp. (See, generally, Dkt. 163, MSJ Jt. Br.; Dkt. 164, SUF).

[3] Specifically, the following exchange between counsel occurred:

MR. HIX: This is one where I want to – the name of the customer is that a trade secret or not?

MS. WON: Just the actual name of it?

(See Dkt. 166-4, MSJ Jt. Br., Exh. 47 at ECF 5021-22) (August 22, 2014 meet-and-confer transcript). And rightly so, as RBC admitted that the names of its customers are listed on its own website, (see, e.g., Dkt. 164, SUF at D27 & P148-P149), and a list of customers is not ordinarily entitled to judicial protection.[4] See Gordon v. Schwartz, 147 Cal.App.2d 213, 217 (1956) (A "list of customers, not ordinarily entitled to judicial protection, may become a trade secret, if there is confidential information concerning the value of these customers."). Perhaps recognizing that it had no evidence to support any of its claims, RBC's counsel modified RBC's position by claiming that RBC's trade secrets are limited to: certain tier designations RBC gives to its customers (based

MR. HIX: Yes.
MS. WON: No.
MR. HIX: Okay.
MS. WON: The actual trade secret is the tier designation, the minimum requirements that are required, you know, that All Power has under, you know, RBC's beheadst [sic] or whatever to acquire from the customer. And then it would just be the individually preferences of those like the nuances of the relationship between the customer and RBC. The actual name can't be because for what you have already pointed out. Yes, we have global distributors listed on the website as different people that purchase it but that doesn't exactly tell you how to get that customer to purchase something from you.

[4] As the California Court of Appeals observed in Morlife, Inc. v. Perry, 56 Cal.App.4th 1514 (1997):

> [C]ourts are reluctant to protect customer lists to the extent they embody information which is "readily ascertainable" through public sources, such as business directories. On the other hand, where the employer has expended time and effort identifying customers with particular needs or characteristics, courts will prohibit former employees from using this information to capture a share of the market. Such lists are to be distinguished from mere identities and locations of customers where anyone could easily identify the entities as potential customers.

Id. at 1521-22 (internal citations omitted). To the extent a customer list does not constitute a trade secret, a prohibition against soliciting customers runs afoul of Cal. Bus. & Profs. Code § 16600, which provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." See Thompson v. Impaxx, Inc., 113 Cal.App.4th 1425, 1429 (2003) ("Antisolicitation covenants are void as unlawful business restraints except where their enforcement is necessary to protect trade secrets.") (internal quotation marks omitted); Edwards v. Arthur Andersen LLP, 44 Cal.4th 937, 948 (2008) (holding provision prohibiting ex-employee from working "for any client on whose account he had worked during 18 months prior to his termination" void, pursuant to Cal. Bus & Profs. Code § 16600) (internal quotation marks omitted).

on volume of business) and corresponding pricing and minimum quantity requirements; and the individual profiles and preferences of the customers as well as other information about RBC's relationship with the customers. (See Dkt. 166-4, MSJ Jt. Br., Exh. 47 at ECF 5021-22).

In any event, RBC had no evidence to support any of its claims for trade secret misappropriation. RBC's entire opposition to the instant Motion is premised on Alvarado's alleged misconduct[5] – as opposed to any of the other individual defendants – in disclosing the identity of RBC customers to David Rankine near the time she began her employment with Caliber. (See Dkt. 164, SUF at D23, P93-P115 & P153-156; Dkt. 191, Opp. at 6-7, 10, 14-15, 19-20 & 25-26). However, as plaintiff's counsel acknowledged, (see Dkt. 183-13, App'x, Exh. 23 at 433-34), Alvarado merely disclosed the identity of RBC's customers – information which was publicly available and already known to defendants – which is insufficient to constitute a trade secret. See Gordon, 147 Cal.App.2d at 217.

None of the evidence put forth by RBC is sufficient to support a claim for misappropriation. Indeed, plaintiff's Rule 30(b)(6) witnesses testified that their only evidence of misappropriation consisted of the individual defendants' access to plaintiff's trade secrets during the course of their employment with plaintiff, and their conclusion that such information would be useful to a competitor such as Caliber. (See, e.g., Dkt. 182, Motion at 9-10) (citing August 6, 2013 deposition of All Power's EVP; September 23, 2013 deposition of All Power's Director of Operations). But the inevitable disclosure doctrine, in which a plaintiff may prove a claim of trade secret misappropriation by demonstrating that defendant's new employment will inevitably lead him or her to rely on plaintiff's trade secrets, has been rejected by the California courts. See, e.g., Whyte v. Schlage Lock Co., 101 Cal.App.4th 1443, 1463 (2002) ("Lest there be any doubt about our holding, our rejection of the inevitable disclosure doctrine is complete."). The doctrine of inevitable disclosure is, in effect, an after-the-fact non-compete in violation of Cal. Bus. & Profs. Code § 16600. See id. at 1462-63 ("The chief ill in the covenant not to compete imposed by the inevitable disclosure doctrine is its after-the-fact nature: The covenant is imposed after the employment contract is made and therefore alters the employment relationship without the employee's consent.") (emphasis omitted).

RBC repeatedly asserts that Alvarado lied about where she was going to work after she left RBC.[6] (See, e.g., Dkt. 191, Opp. at 5-7, 10, 14 & 25-26). RBC's assertions are utterly meritless.

[5] Despite plaintiff's admission during the meet-and-confer prior to the filing of the MSJ Joint Brief, plaintiff repeats the same tone-deaf litany of evidence regarding Alvarado throughout its Opposition. (See, e.g., Dkt. 191, Plaintiff RBC Bearings Incorporated's Opposition to Defendants' Motion for Attorney's Fees and Other Costs ("Opp.") at 6-7, 10, 14-15, 19-20 & 25-26).

[6] It should be noted that the court dismissed with prejudice RBC's claims for fraud based on Alvarado's and the other individual defendants' alleged lies about working for a competing business. (See Dkt. 45, Court's Order of April 3, 2013).

As an initial matter, there was nothing improper about Caliber hiring away Alvarado or any of the other individual defendants from RBC. See Metro Traffic Control, Inc. v. Shadow Traffic Network, 22 Cal.App.4th 853, 859 (1994) ("[C]ompetitors may solicit another's employees if they do not use unlawful means or engage in acts of unfair competition."); SASCO, 207 Cal.App.4th at 848-49 ("Speculation that the individual employees must have taken trade secrets from SASCO based on their decision to change employers does not constitute evidence of misappropriation.").

Further, whether Alvarado or any other individual defendant[7] lied about their reason for leaving RBC or where they were going to work after RBC is irrelevant because "[a]n at-will employment may be ended by either party at any time without cause, for any or no reason, and subject to no procedure except the statutory requirement of notice." Guz v. Bechtel Nat'l Inc., 24 Cal.4th 317, 335 (2000) (internal quotation marks omitted). Just as an employer is not required to give an employee a reason for his or her termination, an at-will employee is not required to give his or her employer any reason, let alone advise the employer as to the name of the new employer where he or she is going to work following the employee's departure. Unless plaintiff had an employment contract with the individual defendants for a specified term that provided a standard for termination for something other an at-will basis, plaintiff cannot impose a requirement that the individual defendants provide a reason for his or her departure.[8] Without a valid employment contract that eliminates the at-will relationship between RBC and its employees, RBC has no basis, notwithstanding any of its purported agreements, to require any explanation from its employees as to the reason for their departure.

What's more, even assuming Alvarado was obligated to give plaintiff a reason for her departure or the name of her new employer, there was nothing about plaintiff's conduct that even remotely suggests an inference of a trade secret violation. Alvarado stated that she told her immediate supervisor, J.R. Lucas ("Lucas"), that she was leaving "to go work with Dave Rankine[.]" (Dkt.166-1, MSJ Jt. Br., Exh. 19 at ECF 4715). According to Alvarado, she told Lucas that she intended to tell All Power that she was going to go work with Dave Rankine, but Lucas – RBC's employee – responded, "I wouldn't say that if I were you. . . . If you tell the truth, they're going to let you go immediately." (Id. at ECF 4716 & 4718). Alvarado told Lucas that, financially, she could not afford to be terminated immediately, to which he responded, "Let's stick with the story that you're going to go work with your husband, but remember, I don't know anything

[7] Again, plaintiff provided little, if any, evidence with respect to any of the other individual defendants. (See, generally, Dkt. 163, MSJ Jt. Br.; Dkt. 164, SUF). Also, given that the other individual defendants left RBC anywhere from three to six years before Alvarado, RBC never explains why it did not sue them years earlier for their alleged trade secret misappropriation, i.e., for lying about their reason for leaving RBC. (See, generally, Dkt. 191, Opp.).

[8] Plaintiff did not put forth any evidence establishing that the individual defendants were anything other than at-will employees. (See, generally, Dkt. 29, SAC; Dkt. 163, MSJ Jt. Br.; Dkt. 164, SUF).

because I can lose my job." (Id. at ECF 4719). Assuming Alvarado was required to give a reason for her departure or the name of her new employer, the reason Alvarado gave was at the direction of her RBC supervisor. In short, RBC produced nothing to indicate that Alvarado, let alone any of the other individual defendants, used any trade secret information – even of the kind based on its shifting explanations i.e., pricing policy and minimum quantity requirements for its customers (Trade Secret 2), or compilations of customer preferences and information (Trade Secret 3). (See, generally, Dkt. 163, MSJ Jt. Br.; Dkt. 164, SUF; Dkt. 191, Opp.).

Aside from its reliance on plainly insufficient evidence regarding Alvarado, RBC offered the opinion of its expert, John Pratt, as evidence of misappropriation. (See 166-3, MSJ Jt. Br., Exh. 37, Expert Report of Dr. John D. Pratt []). In his report, Pratt simply recited the evidence he reviewed (e.g., Alvarado's deposition transcript) and stated his opinion that trade secrets were misappropriated. (See id. at 4 & Exh. 3). Not only is Pratt's opinion inadmissible because it invades the province of the jury,[9] see United States v. Arvin, 900 F.2d 1385, 1389 (9th Cir. 1990), cert. denied, 498 U.S. 1024 (1991) ("The benchmark for exclusion is whether the proffered testimony would usurp the function of the jury."); McClellan v. I-Flow Corp., 710 F.Supp.2d 1092, 1136 (D. Or. 2010) ("It is well established that expert testimony is not helpful if it simply addresses lay matters which the jury is capable of understanding and deciding without the expert's help.") (internal quotation marks omitted), it is plainly invalid because it is based on insufficient evidence. Relying on evidence that would not even survive a summary judgment motion, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2511 (1986) ("The mere existence of a scintilla of evidence in support of the plaintiff's position" is insufficient to survive summary judgment.), cannot serve as a basis for an expert's opinion especially where, as here, the opinion invades the province of the jury. In other words, Pratt's opinion is not an adequate substitute for RBC's lack of evidence showing misappropriation.

In short, none of the evidence offered by RBC suggests that Alvarado, or any other defendant, wrongfully acquired, disclosed, or used RBC's trade secrets.[10] As in FLIR Systems, "[m]issing here is evidence of misappropriation, threatened misappropriation, imminent harm, or

[9] Federal Rule of Evidence 702 governs the admissibility of expert opinion testimony. A prerequisite to admissibility under Rule 702 is that the expert's opinion "will help the trier of fact to understand the evidence or to determine a fact in issue[.]" Fed. R. Evid. 702. "Expert testimony should be excluded if it concerns a subject improper for expert testimony, for example, one that invades the province of the jury." United States v. Lukashov, 694 F.3d 1107, 1116 (9th Cir. 2012), cert. denied, 133 S.Ct. 1744 (2013) (internal quotation marks omitted).

[10] Again, it is worth noting that, other than Alvarado, plaintiff does not put forth any evidence with respect to the other individual defendants. Thus, even assuming plaintiff had put forth sufficient evidence of alleged wrongdoing on the part of Alvarado, the fact remains that plaintiff had no basis to file and/or continue to prosecute the case against the other individual defendants.

ongoing wrongdoing." See 174 Cal.App.4th at 1277. Thus, the objective speciousness element is met.

B. Bad Faith.

The test for subjective bad faith "is not what the plaintiff believed about its objectively specious claim, but for what purpose it pursued such a claim." Cypress Semiconductor, 236 Cal.App.4th at 267 (emphasis omitted). "Subjective bad faith under section 3426.4 means the action was commenced or continued for an improper purpose, such as harassment, delay, or to thwart competition." Sasco, 207 Cal.App.4th at 847. Subjective bad faith may be inferred from: (1) "evidence that [the plaintiff] intended to cause unnecessary delay, filed the action to harass [the defendant], or harbored an improper motive"; (2) "[t]he timing of the action"; or (3) "the plaintiff proceed[ing] to trial after the action's fatal shortcomings are revealed by opposing counsel." FLIR Sys., 174 Cal.App.4th at 1278. "If the court finds that a claim is objectively specious, and that the plaintiff made it for an improper purpose, there is no further requirement that the court also find a lack of subjective belief in the merits of its case." Cypress Semiconductor, 236 Cal.App.4th at 267 (internal quotation marks omitted).

1. **Evidentiary Shortcomings**.

"A trade secrets claim could be brought in good faith but warrant attorney fees were the claim pursued beyond a point where the plaintiff no longer believes the case has merit." FLIR Sys., 174 Cal.App.4th at 1283. "Bad faith may be inferred where the specific shortcomings of the case are identified by opposing counsel, and the decision is made to go forward despite the inability to respond to the arguments raised." Gemini Aluminum, 95 Cal.App.4th at 1264 (internal quotation marks omitted).

Here, the court is persuaded that plaintiff's motive for filing this action was not to protect its trade secrets, but to stifle competition with Caliber. As an initial matter, it should be noted that plaintiff did not file this lawsuit until August 31, 2012, (see Dkt. 1, Complaint), despite the fact that it had acquired All Power almost six years earlier in September 2006, (see Dkt. 29, SAC at ¶ 14), and four of the five individual defendants had terminated their employment with All Power and commenced employment with Caliber by 2009. (See id. at ¶¶ 104-107). It was not until 2012, three years after McCullouch was hired in 2009, (see id. at ¶ 107), and six years after plaintiff's acquisition of All Power, that plaintiff first instituted this action. Again, not only is there virtually no evidence that any of the individual defendants other than Alvarado misappropriated RBC's trade secrets, but RBC's counsel provides no explanation as to why it did not file suit against the other individual defendants years earlier after they had resigned their employment.[11] (See, generally,

[11] Plaintiff alleges that it discovered the trade secret misappropriation in 2012. (See, Dkt. 29, SAC at ¶ 40). However, plaintiff's allegation is belied by its assertion that the other individual defendants – like Alvarado – lied about their reason for leaving All Power, (id. at ¶ 22), since

Dkt. 163, MSJ Jt. Br.). Plaintiff's counsel's lack of an explanation is somewhat troubling, especially given their assertion that some of the other individual defendants lied about the reason for their departure. (See Dkt. 29, SAC at ¶¶ 19-23) (alleging Sharp, Alvarado, and McCullouch lied).

Regardless, plaintiff and plaintiff's counsel acknowledged that they had no evidence of trade secret misappropriation at multiple points during the course of this litigation. First, after defendants demanded specific evidence of trade secret misappropriation in their July 15, 2012, response to plaintiff's pre-lawsuit cease-and-desist letter, plaintiff filed its initial Complaint rather than provide defendants with any evidence of wrongdoing. (See Dkt. 183-14, App'x, Exh. 24 (July 3, 2012 case and desist letter); Dkt. 183-15, App'x, Exh. 25 (defendants' July 16, 2012 response)). On August 7, 2013, defendants sent a letter to plaintiff's counsel, "urg[ing plaintiff] to dismiss the action now to limit RBC's and [plaintiff's] exposure to further attorneys' fees and other liability." (Dkt. 183-17, App'x, Exh. 27 at 470). Specifically, defendants noted that based on the documents it had produced to date, RBC "now know[s] that there is no evidence whatsoever that the defendants took or are using any of RBC's alleged trade secrets." (Id. at 469). Plaintiff did not respond to any of the letters.

"Bad faith may be inferred where the specific shortcomings of the case are identified by opposing counsel, and the decision is made to go forward despite the inability to respond to the arguments raised." Alamar Biosciences, Inc. v. Difco Labs., Inc., 1996 WL 784495, *1 (E.D. Cal. 1996). Plaintiff, in an effort to distinguish Alamar Biosciences, Inc, contends that it was unnecessary to respond to the July 16, 2012 or August 7, 2013, letters because "neither of Defense counsel's letters . . . concern the statute of limitations running on RBC's claims, which was the only issue addressed by the Alamar Court when it stated that bad faith could be inferred from shortcomings identified by an opposing counsel." (Dkt. 191, Opp. at 18-19). Under plaintiff's interpretation of Alamar, a lawyer would never need to respond to a letter from opposing counsel claiming that there is no evidence of a trade secret violation unless the lack of a trade secret violation was based on a statute of limitations ground. This response is not only absurd and reckless but also an example of the misleading way in which plaintiff's counsel interprets case authority.

In any event, other than stating that it was not required to respond to the letters because there was no assertion in the letters that the trade secret claims were time-barred, plaintiff does not attempt to explain why it did not respond to any of the letters. (See, generally, Dkt. 191, Opp.). In short, the record is clear that plaintiff's counsel was repeatedly notified of the evidentiary deficiencies of their client's claims, and plaintiff's counsel not only admitted as much, but proceeded with the case. See Alamar Biosciences, Inc., 1996 WL 784495, at *1.

Indeed, by the close of fact discovery, plaintiff's counsel acknowledged that none of the

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some of the other defendants gave their reason for leaving All Power years before 2012. (See id. at ¶ 22 (Sharp); id. at ¶ 23 (McCullouch)).

documents produced by defendants demonstrated that they were in possession of any of plaintiff's trade secrets. (See Dkt. 183-13, App'x, Exh. 23 at 435 (Defts' counsel: "Would you agree that there were matches as far as anything proprietary?" Plff's counsel: "I[] don't believe they were, there were any."); id. at 436 (Defts' counsel: "there is no match you would agree?" Plff's counsel: "I believe that there wasn't a match.")). But rather than end the litigation, plaintiff opposed defendants' motion for summary judgment, even when plaintiff's counsel admitted during the in-person meet-and-confer in advance of the filing of the summary judgment motion that the only evidence of misappropriation that it had – Alvarado's knowledge of the names of plaintiff's customers – does not constitute misappropriation under California law. (See Dkt. 183-13, App'x., Exh. 23 at 433-34); Gordon, 147 Cal.App.2d at 217 (list of customers, absent confidential information concerning value of customers, cannot be protected trade secret); Morlife, Inc. v. Perry, 56 Cal.App.4th 1521-22. Plaintiff waited four months after the filing of the MSJ Joint Brief and 15 months after the close of fact discovery to dismiss this action with prejudice. (See Dkt. 179, Stipulation) (filed January 6, 2015).

2. **Satellite Litigation**.

The court is also persuaded that plaintiff, in bad faith "attempted to wear down [defendants] with duplicative and costly satellite litigation in two separate forums . . . in an apparent effort to pummel them into submission by needlessly driving up their litigation costs." SASCO, 207 Cal.App.4th at 844 n. 4 (internal quotation marks omitted).

As noted earlier, on October 15, 2013 – the same day as the discovery cut-off in this action, (see Dkt. 92, Court's Order of October 1, 2013) – All Power filed two state court actions against defendants and defendant David Rankine's mother in the Los Angeles County Superior Court.[12] (See Dkt. 183-10, App'x, Exh. 20 (Caliber Action); Dkt. 183-11, App'x, Exh. 21 (J. Rankine Action)). With respect to the J. Rankine Action, plaintiff claims that it filed that action "for the sole reason of addressing a new claim that arose during the deposition of David Rankine in this action." (Dkt. 191, Opp. at 23). However, plaintiff never explains why it simply did not seek leave to amend

[12] RBC appears to suggest that the other lawsuits (or counterclaims) are not evidence of bad faith because they were prosecuted by a different party, i.e., All Power and RBC America. (See Dkt. 191, Opp. at 23-24). However, All Power and RBC America are subsidiaries of RBC and all three parties are represented by the same attorneys. (See Dkt. 183-7, App'x, Exh. 17; Dkt. 183-10, App'x, Exhs. 20 & 21). More importantly, the individual defendants here were employees of All Power, not RBC, (see Dkt. 29, SAC at ¶ 14), and RBC does not explain why it – as opposed to All Power – initiated the instant action against the individual defendants. (See, generally, Dkt. 191, Opp.). Finally, RBC does not explain why the individual defendants signed purported confidentiality agreements with RBC and not All Power. (See, generally, id.). In short, there is no doubt that under the circumstances here, RBC, All Power and RBC America were acting and coordinating as one entity as to all matters involving Caliber, the individual defendants and Joyce Rankine.

the complaint in this action to add the new claim and defendant. (See, generally, id.). Further, plaintiff merely attempted to justify its dismissal of the action against Joyce Rankine on the basis of her discovery responses. (See id. at 23-24). In any event, plaintiff does not dispute that it dismissed the Joyce Rankine case after the stated court had granted trial setting preference due to her advanced age and deteriorating health.[13] (See Dkt. 182-2, Declaration of Clayton Hix ("Hix Decl.") at ¶ 23; see, generally, Dkt. 191, Opp.).

Plaintiff also does not dispute that it dismissed, on the same day, the Caliber Action it filed against the same defendants in this case while a second demurrer was pending. (See Dkt. 182-2, Hix Decl. at ¶ 22; see, generally, Dkt. 191, Opp.). Again, plaintiff makes no effort to explain why it did not seek leave to raise the claims in this case, especially since the claims were against the same defendants, (see, generally, id.), or why it dismissed this action other than to state that it "involved different causes of action, a different moving party and was not costly because it was voluntarily dismissed, without prejudice, at the pleadings stage."[14] (Dkt. 191, Opp. at 23). In short, it appears that plaintiff, unable to obtain admissible evidence that defendants were in possession of Trade Secrets Nos. 1-7, initiated two state court lawsuits which were largely duplicative – without even attempting to ask this court to amend the operative complaint to bring in the claims and new defendant into this action – in an attempt to pursue additional discovery (after having served multiple sets of written discovery requests on defendants as recently as August 7, 2013) and wear down defendants.

The third lawsuit was, as noted earlier, filed by Joyce Rankine. However, RBC America filed counterclaims against Joyce Rankine alleging that the individual defendants "engaged in fraudulent, unlawful, and wrongful conduct by misappropriating, using, disclosing, and obtaining

[13] Of course, if plaintiff truly had a valid claim against Joyce Rankine, it would have welcomed the quick trial date, especially given the court congestion faced by the state courts. Instead, plaintiff references Joyce Rankine's discovery responses as a basis for dismissing the case but provides no explanation as to how and why those responses compelled All Power to dismiss the case. Given plaintiff's assertion that "[h]ad Joyce Rankine not entered the noncompetition agreement with All Power and RBC[America], the All Power v. Rankine action would never have been filed[,]" (Dkt. 191, Opp. at 23), plaintiff's failure to explain how Joyce Rankine's discovery responses compelled the dismissal of the action is problematic.

[14] Under the circumstances, the court is troubled by plaintiff's refusal to pay the cost judgments entered in the state court actions. For example, in the Caliber Action, plaintiff refuses to pay "a cost judgment was entered in the amount of $2,670[, which] RBC refused to voluntarily pay . . . despite [defendants'] repeated requests[.]" (Dkt. 182-2, Hix Decl. at ¶ 22). RBC does not deny the refusals to pay the cost judgments, (see, generally, Dkt. 191, Opp.), but rather characterizes the episode as indicative of its "disdain" for defendants and not "bad faith and malice." (Dkt. 191, Opp. at 24). Under the circumstances here, plaintiff's "disdain" equates and is certainly indicative of RBC's "bad faith and malice."

by improper means, [RBC America's] trade secret information[.]" (Dkt. 183-7, App'x, Exh. 17 at ¶ 38). Although the individual defendants were not parties in the Counterclaim Action, RBC America's counterclaim against Rankine's mother for breach of contract was premised on defendants' misappropriation of trade secrets.

On November 5, 2013, the court in the Southern District of California granted Joyce Rankine's motion for summary judgment, stating that "[t]here [wa]s no evidence to support [RBC America's] claim of [individual defendants'] misconduct. It is pure conjecture that the [individual defendants] utilized All Power's intellectual property assets when forming Caliber Aero, LLC." (Dkt. 183-8, App'x, Exh. 18 at 370). The court awarded Joyce Rankine attorney's fees and costs amounting to approximately $180,000. (See Dkt. 183-9, App'x, Exh. 19 at 385).

3. **Settlement Demands**.

"A trial court, in awarding sanctions, may consider a party's dilatory tactics and bad faith settlement demands in maintaining the action." FLIR Sys., 174 Cal. App. 4th at 1282.

On August 6, 2013, approximately one year after RBC filed this lawsuit, and two months before the close of fact discovery, RBC made a settlement demand of $10.3 million, which was the amount RBC paid to acquire All Power. (See Dkt. 191, Opp. at 3-4; 183-16, App'x, Exh. 26). RBC asserts that it did not have a damages expert at the time it made its initial settlement demand and, therefore, "the initial demand to Defendants was based on the only valuation RBC could consider at the time, the sale price of All Power at the time it was sold to [RBC America], approximately $10 million." (Dkt. 191, Opp. at 29). Simply quoting plaintiff's assertion is enough to establish the absurdity of its position. First, whether a party makes a good faith settlement demand – as was required by the Magistrate Judge's settlement order, (see Dkt. 63, Court's Order of July 16, 2013, at 4 n. 2), as well as the ethics and desire of an attorney to be professional and credible in his or her representations to the court and to opposing parties – is not dictated by whether a party has retained an expert at the time it issues its settlement demand. If an attorney believes he or she cannot issue a good faith settlement demand without input from an expert, then the attorney should not issue the settlement demand. In other words, an attorney should not issue a settlement demand that is plainly a non-starter (i.e., frivolous) from the standpoint of initiating good-faith settlement discussions. Such a settlement demand not only undermines the credibility of the attorney issuing the demand, it is also disrespectful to the judge or settlement officer that is tasked with presiding over the settlement proceedings. Here, given the claims asserted by RBC in this action, RBC's settlement demand based on the sale price of All Power – who is not even a party in this action – was inflammatory and clearly made in bad faith. RBC's settlement demand bore no relationship whatsoever to plaintiff's trade secret misappropriation claims. See FLIR Sys., 174 Cal.App.4th at 1282 (bad faith found when "settlement terms were not related to the trade secret action").

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**SA CV 12-1442 FMO (PLAx)**	Date	**August 1, 2016**
Title	**RBC Bearings Incorporated v. Caliber Aero, LLC, et al.**		

On February 24, 2014, RBC made a settlement offer for $150,000[15] and injunctive relief that included a demand that Alvarado be "barred from conducting any type of inside or outside sales for Caliber, with any customers listed on Tier 1 and Tier 2 of RBC's most recent customer lists[.]"[16] (Dkt. 183-18, App'x, Exh. 28 at 475). Such a term violates public policy, as it constitutes an unlawful restraint of trade pursuant to Cal. Bus. & Profs. Code § 16600. See FLIR Sys., 174 Cal.App.4th at 1282 (bad faith found when settlement condition requiring that defendants not work with plaintiff's customers was "made for an anticompetitive purpose," under Cal. Bus. & Profs. Code § 16600); Edwards, 44 Cal.4th at 948 (holding provision prohibiting ex-employee from working "for any client on whose account he had worked during 18 months prior to his termination" void, pursuant to Cal. Bus & Profs. Code § 16600).

In short, as in FLIR Sys., "the settlement terms were inflammatory, violated public policy, and were made in bad faith." 174 Cal.App.4th at 1282.

III. REASONABLE FEE.

Where bad faith is found, "the court may award reasonable attorney's fees and costs to the prevailing party." Cal. Civ. Code § 3426.4. Recoverable costs under the statute "include a reasonable sum to cover the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the prevailing party." Id.

In the Motion, defendants request $131,762.50 in attorney's fees and $8,094.54 in expert fees and other costs. (See Dkt. 182, Motion at 21-22). In support of the Motion, defendants submitted attorney declarations and invoices about the hours billed by and hourly rates of defendants' attorneys.[17] (See Dkt. 182-2, Hix Decl. at ¶ 31; Dkt. 182-3, Martin Decl.; Dkt. 183-19,

[15] Approximately two months after RBC's initial settlement demand of $10.3 million, RBC's damages expert, Jubin Merati, assuming that 100% of Caliber's sales are attributable to misappropriating RBC's trade secrets, opined that RBC's "best case scenario" of damages was $981,043. (See Dkt. 183-2, App'x, Exh. 12 at 239). The expert's conclusion – assuming it was valid – coupled with RBC's subsequent demand of $150,000, only highlight the inflammatory nature and bad faith of RBC's initial settlement demand.

[16] As part of this settlement demand, RBC did not seek the same concessions from the other individual defendants, providing further support that RBC had no basis at all for suing and/or continuing the case against the other individual defendants.

[17] In addition to the hours charged to defendants, defendants' attorneys billed, but did not charge for 68.5 hours of time as an accommodation to defendants because they are operating a small start-up business with limited resources. (See Dkt. 182-3, Declaration of Neil Martin ("Martin Decl.") at ¶ 4). Defendants do not seek to recover for this time not actually charged to defendants.

App'x, Exh. 29; Dkt. 183-20, App'x, Exh. 30; Dkt. 183-21, App'x, Exh. 31; Dkt. 183-22, App'x, Exh. 32).

RBC's only specific challenge to the amount of attorney's fees claimed by defendants is that 3.2 of the hours billed were apparently for defendants' representation in the RBC America Action, not the present action. (See Dkt. 191, Opp. at 32). Plaintiff did not assert any other specific basis or challenge to defendants' counsel's hours and, therefore, no further reduction is appropriate.[18] See Gates v. Rowland, 39 F.3d 1439, 1449 (9th Cir. 1994) (fee opponents failed to meet burden of rebuttal, because opponents failed to point out with specificity any charges that were excessive or duplicative); Columbia Pictures Tele. v. Krypton Broad. of Birmingham, Inc., 106 F.3d 284, 296-97 (9th Cir. 1997), rev'd on other grounds, 523 U.S. 340 (1998) (rejecting argument that certain hours should have been excluded, because no specific objection was raised in district court); see also Smith v. Rogers Galvanizing, 148 F.3d 1196, 1199 (10th Cir. 1998) (district court did not abuse discretion in refusing to reduce hours as to which fee opponent made no specific objection); Sheets v. Salt Lake City, 45 F.3d 1383, 1391 (10th Cir.), cert. denied, 516 U.S. 817 (1995) (fee opponent who argued merely that fee request was exorbitant and duplicative failed to carry burden of opposing fee, and waived issue for purposes of appeal). In any event, defendants agreed to reduce the amount of requested fees by $1,104 (for the 3.2 hours). (See Dkt. 195, Defendants' Reply to Opposition to Motion for Attorneys' Fees and Non-Taxable Costs at 9).

RBC challenges the amount of costs sought by defendants. First, RBC relies on Wyatt Tech. Corp. v. Malvern Instruments, Inc., 2010 WL 11404472 (C.D. Cal. 2010), and asserts that "[t]he Ninth Circuit has squarely rejected the proposition that state statutes can apply in federal court to evade the expert witness cap found in [28 U.S.C. §§] 1821(b) and 1920." (Dkt. 191, Opp. at 34). Putting aside the fact that the Wyatt decision is a district court case (and therefore not binding on this court or other district courts) and not a Ninth Circuit case, RBC's counsel again misconstrues case authority. The cited portion of Wyatt Tech. was discussing recovery of expert fees as a taxable cost under 28 U.S.C. § 1920. In fact, the court in Wyatt Tech. expressly found the defendant's expert fees awardable as non-taxable costs authorized by a substantive statute (e.g., the Copyright Act). See 2010 WL 11404472, at *4; see also Grove v. Wells Fargo Fin. Cal., Inc., 606 F.3d 577, 583 (9th Cir. 2010) (affirming rejection of the plaintiff's claim for taxable costs but remanding to district court to consider the plaintiff's claim for non-taxable costs as part of the attorney's fees award as authorized by statute). Contrary to RBC's contention, (see Dkt. 191, Opp. at 34), the Ninth Circuit has held that federal courts sitting in diversity may properly award

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(See id.).

[18] The court has independently reviewed defendants' request for fees and finds that the hours and hourly rate requested are reasonable. See Gates v. Deukmejian, 987 F.2d 1392, 1401 (9th Cir. 1992) (court has duty "to independently review plaintiffs' fee request even absent defense objections").

attorney's fees and costs under California Civil Code § 3426.4.[19] See CRST Van Expedited, Inc. v. Werner Enters., Inc., 479 F.3d 1099, 1111 (9th Cir. 2007) ("[W]e conclude that § 3426.4 properly was applied by the district court under the rule of Erie v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938), which requires federal courts sitting in diversity to apply state substantive law and federal procedural law."). In short, the court finds the requested expert fees of $4,200 to be actually incurred and reasonably necessary in preparation for trial.

Defendants also seek to recover, as non-taxable costs, $3,894.54 in miscellaneous expenses, including for messenger services, document processing, copying and bates labeling, parking, legal research, and PACER charges. Although such costs are potentially awardable, defendants have failed to demonstrate, or even argue, that "it is the prevailing practice in the given community for lawyers to bill those costs separate from their hourly rates." Grove, 606 F.3d at 583; see also Chalmers v. City of Los Angeles, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986), amended by, 808 F.2d 1373 (9th Cir. 1987) ("Even though not normally taxable as costs, out-of-pocket expenses incurred by an attorney which would normally be charged to a fee paying client are recoverable as attorney's fees under [42 U.S.C.] section 1988."). Accordingly, the court declines to award defendants the requested $3,894.54 in miscellaneous non-taxable costs.

Therefore, the court finds it appropriate to award defendants attorney's fees of $130,658.50 and costs of $4,200.00 from RBC.

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

The court is troubled by RBC's conduct in this case. Other than the fact that the individual defendants were employees of one of RBC's subsidiaries (All Power) and likely had access to trade secret material – a legal and factual basis that is plainly insufficient to constitute evidence of misappropriation – RBC had no evidence of any trade secret misappropriation. RBC's theory (which appears to have also guided its conduct in the other cases) that Alvarado gave the names of some of RBC's customers and that the individual defendants must have disclosed RBC's trade secrets because they went to work for Caliber, a competitor, is nothing more than assertion of the inevitable disclosure doctrine – a doctrine that has been rejected by California courts for its anticompetitive effects. See Whyte, 101 Cal.App.4th at 1463 ("Lest there be any doubt about our holding, our rejection of the inevitable disclosure doctrine is complete."); see id. at 1462-63 ("The chief ill in the covenant not to compete imposed by the inevitable disclosure doctrine is its

[19] Notably, in 2006, California's legislature amended California Civil Code § 3426.4 to expressly "authorize the court to also award costs [in addition to reasonable attorney's fees] to the prevailing party, including a reasonable sum to cover the services of expert witnesses." CLAIMS–TRADE SECRETS–COSTS, 2006 Cal. Legis. Serv. Ch. 62 (S.B. 1636) (West).

after-the-fact nature: The covenant is imposed after the employment contract is made and therefore alters the employment relationship without the employee's consent.") (emphasis omitted). What's more, the only evidence – a scintilla of evidence at that – put forth by RBC relates to Alvarado. Thus, even assuming the evidence against Alvarado exceeded a mere scintilla, the fact remains that RBC had no basis for filing and/or prosecuting the action against Caliber or the other individual defendants.

Perhaps even worse, while this case was ongoing, RBC filed two other cases – which could have arguably been incorporated into this case – that were largely duplicative of the instant case. RBC even filed a counterclaim in a third action raising similar, if not identical, allegations of misconduct to those asserted in this case. And even after disposing of all the other cases – two of which RBC dismissed while either a demurrer was pending or after an expedited trial date was set – RBC continued to litigate this case for more than two years before it voluntarily dismissed this case with prejudice while a summary judgment motion was pending, with no strings attached.

Finally, it is worth noting that it is likely that this costly and time-consuming litigation arguably could have been avoided and/or at least minimized had counsel for plaintiff been more diligent in complying with their ethical and professional obligations. Had defendants sought sanctions against plaintiff's counsel, Annie Won and James Bohm, pursuant to 28 U.S.C. § 1927, Fed. R. Civ. P. 11 and/or the court's inherent authority, the court believes their conduct might have warranted the imposition of sanctions against them personally. See 28 U.S.C. § 1927 ("Any attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."); Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc., 210 F.3d 1112, 1117 (9th Cir. 2000) ("Section 1927 authorizes the imposition of sanctions against any lawyer who wrongfully proliferates litigation proceedings once a case has commenced."); Fjelstad v. Am. Honda Motor Co., Inc., 762 F.2d 1334, 1338 (9th Cir. 1985) ("[C]ourts have inherent power to [enter sanctions] . . . when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice."); Christian v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002) ("[o]ne of the fundamental purposes of Rule 11 is to reduce frivolous claims, defenses or motions and to deter costly meritless maneuvers, [thereby] avoid[ing] delay and unnecessary expense in litigation.") (internal quotation marks omitted; first alteration added). As discussed throughout this Order, much of the conduct in this case, including many of the arguments made by plaintiff's counsel, was arguably unreasonable, vexatious and/or reckless. The court hopes that in the future plaintiff's counsel will take their professional and ethical obligations more seriously.

Based on the foregoing, IT IS ORDERED THAT:

1. Defendants' Motion for Attorneys' Fees and Non-Taxable Costs (**Document No. 182**) is **granted in part and denied in part**. No later than seven (7) days from the filing date of this Order, RBC shall pay defendants attorney's fees and costs in the amount of $**134,858.50**.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**SA CV 12-1442 FMO (PLAx)**	Date	**August 1, 2016**
Title	**RBC Bearings Incorporated v. Caliber Aero, LLC, et al.**		

2. Plaintiff's counsel Annie Ventocilla Won and James Bohm shall, no later than **August 3, 2016**, provide a copy of this Order to the President of RBC and RBC's General Counsel, and shall file a Declaration Re: Compliance with Court's Order, no later than **August 4, 2016**. The Declaration shall include the name and address of the person's provided with a copy of this Order, and the date on which the Order was provided.

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